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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 718

COMMERCIAL NATIONAL BANK IN SHREVEPORT,
Petitioner,

versus

R. C. PARSONS, RECEIVER OF COMMERCIAL
NATIONAL BANK OF SHREVEPORT,

And

RANDLE T. MOORE, ET AL., AS STOCKHOLDERS
COMMITTEE OF COMMERCIAL NATIONAL
BANK OF SHREVEPORT,
Respondents.

PETITION FOR WRITS OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT

And

BRIEF IN SUPPORT OF PETITION FOR WRITS OF
CERTIORARI.

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INDEX

	Page
PETITION FOR WRIT OF CERTIORARI	i-ix
Opinions Below	ii
Summary Statement	iii
Jurisdiction	vi
Questions Presented	vi
Reasons Relied Upon For Allowance of Writ Of Certiorari	vii
BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI	1-34
I. The Circuit Court of Appeals was without power to enlarge the right of the appellee in the absence of a cross-appeal.....	3-10
II. Orderly judicial procedure is departed from by appellate court when it disregards solemn ad- mission made in the Lower Court, upon which that Court had acted: and when, on appeal, it is admitted by counsel that the decision below was correct	10-14
III. The ruling that there was usury is inconsistent with local law	15-24
IV. The ruling of the Circuit Court of Appeals with respect to the One Million Dollar note is inconsistent with decisions of other Circuit Courts of Appeal	24-25
V. With respect to the so-called "tax savings"....	26-34
(a) The decision is inconsistent with local law	29
(b) The ruling below is inconsistent with de- cisions of this Court	33



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*To the Honorable, the Chief Justice and Associate Justices
of the Supreme Court of the United States:*

The petitioner, COMMERCIAL NATIONAL
BANK IN SHREVEPORT, respectfully prays for the
issuance of writs of certiorari for the review of a decision

and decree made and entered in the United States Circuit Court of Appeals for the Fifth Circuit (Judges Holmes, McCord and Waller sitting).

An opinion was handed down by the court below on July 27, 1944 (R. 784) and is reported in 144 Fed. (2d) 231. Another opinion, on petition for rehearing, was entered on October 28, 1944 (R. 822) and is as yet not reported.

The original opinion

- (a) enlarged the rights of the appellees by reversing in their favor, in the absence of cross-appeal, the decree entered in the United States District Court for the Western District of Louisiana in respect of two of the causes of action there decided in favor of the petitioner, and hence adversely to the appellees; and
- (b) affirmed, on petitioner's appeal, that part of the decree of the District Court in which appellees had been successful.

(There was another issue raised by appellant's assignments of error, *i. e.*, that it was entitled to compensation for administration of assets, upon which the District Court was reversed. That matter is not here material, and is mentioned only for complete accuracy in statement).

Judge Waller dissented from the action of the Court in respect of all of the above conclusions, and filed a written opinion (R. 798).

Petition for rehearing was timely filed. In response thereto, another opinion was handed down (R. 822) adhering to that originally rendered: Judge Waller again dissenting.

Summary Statement of the Case.

This suit was instituted by the Receiver of a former national banking institution whose affairs had been taken over by another national bank, the present petitioner, under a written contract (R. 12, *et seq.*). The opinion complained of does correctly state:

"It involves a controversy between two national banks, but its correct decision upon all issues depends upon the law of Louisiana. For a statement of the case, including a verbatim quotation of the contract between the parties, see the opinions of the court below in *Leslie v. Commercial National Bank*, 28 Fed. Supp. 927, and *Rawlings v. Commercial National Bank in Shreveport*, 44 Fed. Supp. 5."

The complaint (R. 4, *et seq.*) declared upon certain definite causes of action, in respect of each of which it was asserted that the defendant (the present petitioner) had not properly accounted to the Receiver of the old bank. These asserted causes of action were based upon alleged unauthorized or illegal charges made by the new bank, principal among which were (R. 5) (a) that the new bank had made savings in taxes, in that it had caused realty pledged by the old bank to be assessed to the new bank, and its valuation thereby deducted from the assessment of its corporate structure under the provision of the Louisiana taxing statute providing for such deduction; (b)(R.8) that

certain note for one million dollars given by the old bank as collateral was without consideration, and hence represented no indebtedness and justified no charge for interest; and (c) that a charge stipulated in a clause of the contract (R. 18) providing for the charging of interest at the rate of six percent per annum on Class B assets was (R. 9) unreasonable.

By amended complaint, the alternative claim was advanced (R. 45) that these interest charges were usurious.

The prayer (R. 11) was that, upon adjudication of those matters, an account "be made and filed in accordance with the rights of the plaintiff as herein set forth".

Representatives of the stockholders of the old bank intervened (R. 42), adopting the allegations and prayer of the Receiver's complaint.

Defendant (R. 30, *set seq.*), after putting these claims at issue, countered with cross-complaints based upon claims to compensation for administration of assets. The District Judge handed down two opinions (R. 50 and R. 684). These are reported as stated above. Final decree, pursuant to these opinions, was entered and signed on April 14, 1943 (R. 692). Reference to the final opinion (R. 684-695) discloses that the District Court considered that there were four questions before it, two of which—*i. e.*, the claim based upon the so-called tax savings, and defendant's claim for compensation—it decided against the present petitioner; and two—*i. e.*, the claim that the interest charge was unreasonable or usurious, and that

based upon the invalidity of the one million dollar note—in favor of petitioner.

The case reached the Circuit Court of Appeals upon an appeal taken by this petitioner on April 17, 1943 (R. 765). Petitioner there assigned as error three matters only, *i. e.*, the ruling of the District Court denying the claim for compensation; that holding it liable for the so-called tax saving; and, only incidental to the second, the decision of the District Court that it was liable for interest on such tax saving. Neither plaintiff nor intervenors cross-appealed; and, in their briefs, both admitted the correctness of the lower court's action (see dissenting opinion, R. 807-8).

Notwithstanding the absence of cross-appeal, and the admission in appellees' briefs of the correctness of the action of the lower court, two Judges of the three sitting undertook to reverse that decree in respect of issues on which petitioner had prevailed below.

Complaint of this action having been made by way of petition for rehearing, the two Judges filed another formal opinion in justification of their former ruling. (R. 822).

Contemporaneously with the filing of the petition for rehearing, petitioner filed with the Circuit Court of Appeals its motion for a reference of the case to the court *en banc*. This motion was denied in a formal order. (R. 821).

In addition to its action in assuming, in the absence of cross-appeal, to reverse that part of the decree of the District Court adverse to the appellees, and thereby to enlarge appellees' rights, the Circuit Court of Appeals affirmed that part of the decree of the District Court upon which the greater portion of the money judgment had been based. Upon petitioner's other assignment of error, *i. e.*, that relating to reimbursement for costs of administration, it reversed and remanded, but with the holding that the eventual right to recover was dependent upon a matter raised neither by pleading nor otherwise, *i. e.*, whether the defendant was responsible for the appointment by the Comptroller of the Currency of a Receiver for the old bank (R. 789).

Jurisdiction.

The original judgment of the Circuit Court of Appeals was entered July 27, 1944 (R. 784); the opinion refusing the rehearing, on October 28, 1944 (R. 822).

Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (Title 28, U. S. C., Section 347).

Questions Presented.

1. At the threshold, there is presented the procedural question of universal legal importance, of the right and power of a United States Circuit Court of Appeals, in the absence of a cross-appeal, to enlarge the rights of an appellee: the absence of such power having been settled by innumerable decisions of this Court.

2. Subsidiarily thereto, the right of an intermediate appellate court to disregard express admissions made in the trial Court and on appeal by counsel for appellees of the correctness of the decree appealed from.

3. An important question of local law has been decided below in a way in conflict with applicable local decisions.

4. Another important question of substantive law has been decided below in conflict with applicable decisions of other Circuit Courts of Appeals.

5. An important question arising in the administration of affairs of embarrassed national banks has been here decided, wherein the majority of the Judges sitting below have decided an important question of substantive law in a way (if determinable by local law, as petitioner contends and as the original opinion states) in conflict with applicable local law; or, if a matter of federal law, then clearly in conflict with applicable decisions of this Court.

**Reasons Relied Upon for Allowance of
Writs of Certiorari.**

1. The action of the Court below in reversing, without cross-appeal and thereby enlarging the rights of the appellees, is such a departure from the accepted and usual course of judicial proceedings, and so plainly in conflict with a long line of decisions of this Court, as to call for the exercise of the power of supervision of this Court.

2. The action of the court below in disregarding and ignoring the express admission of appellees of the correctness of the decree of the court below, is likewise a departure from the accepted and usual course of judicial proceedings.

3. Upon a claim of usury advanced by appellees in their pleadings in the lower court, there adversely decided, and admitted in his brief and in argument to have been correctly adjudicated against him, the Circuit Court of Appeals, disagreeing with the lower court and with appellees, undertook to reverse and to hold that there was usury. This, despite the fact that the amount claimed to be usurious did not proceed from a loan of money; and that, under the applicable decisions of the courts of Louisiana, wherein the contract was made and to be performed, usury can arise out of nothing except a loan of money.

4. The Circuit Court of Appeals, again enlarging the rights of appellees without a cross-appeal, held (R. 794), despite the admissions, that a note for One Million Dollars, executed as evidence of the stockholders' liability of the old bank, was without consideration. The ruling of the Court below was in conflict with decisions of the Circuit Court of Appeals of the First Circuit, and of the Fourth Circuit.

5. The only question presented to the court below by the appeal (outside, of course, of the contention raised by petitioner below of its right to compensation for administration, and which is not here material), was the liability held by the lower court to exist (R. 50, *et seq.*),

through the saving by petitioner of taxes growing out of the assessment to it of realty belonging to the old bank, represented by the Receiver. Decision of that issue involved an interpretation of the local law of pledge or antichresis, wherein the decision of the majority below was in conflict with such local law.

Beyond the inconsistency of such decision with local law, it was, in its holding that there was a saving by the new bank and not by its stockholders, in plain conflict with decisions of this Court.

WHEREFORE, your petitioner prays that writs of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding that Court to certify and send to this Court for its review and determination, on a day certain to be named therein, a full and complete transcript of the record of the proceedings in case Number 10,669, entitled on its docket "Commercial National Bank in Shreveport v. R. C. Parsons, Receiver of Commercial National Bank of Shreveport"; and that said judgment of the said Circuit Court of Appeals in said case may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet.

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